REMARKS

Applicants respond to the Office Action mailed December 31, 2008 within three months. Applicants cancel claims 68-73 without prejudice to filing claims having similar subject matter in this or other applications. Applicants add new claims 74-98. Support for these new claims may be found in the specification, claims, and drawing figures as originally filed. Applicants submit that no new matter has been added with these new claims. Applicants respectfully request reconsideration of this application.

Initially, Applicants note that the Board of Patent Appeals and Interferences (the "Board") issued a decision in an appeal in the present application on September 3, 2008. The Board reversed all of the Examiner's rejections, stating:

> We cannot find a factually sufficient disclosure of the personal-image recognizing limitation within Hollenberg [U.S. 6,091,956]. At best, Hollenberg proposes a situational information system where digital photographs or video recordings of traffic congestion and emergency-situation information could be transmitted with camera and communication capabilities. *However, this is not a teaching of the personal-image recognizing limitation required in the claims on appeal* . . .For these reasons, the Examiner has not established that the personal-image recognizing limitation claimed on appeal is known in the art.

(Board Dec. at 5) (emphasis added).

Where the Board reverses all rejections, as is the case here, "The examiner should never regard such a reversal as a challenge to make a new search to uncover other and better references." M.P.E.P. § 1214.04. The present application has been pending for nearly 8 years, and the present Examiner is the original examiner assigned to this Application. Only now, however, does the Examiner cite Hull et al., U.S. Patent No. 5,806,005 (Hull) in rejecting Applicants' claims. Applicants respectfully, but strenuously assert that such a rejection at this point is improper, because the Examiner's initial search should have revealed Hull, and if the Examiner believed Hull was stronger than Hollenberg, the Examiner should have cited Hull instead *prior to the appeal* on which the Board decision was based.

By delaying this citation of Hull (which as argued below still does not render Applicants' claims unpatentable), the Examiner has essentially nullified Applicants' and the Board's time, effort and expense with respect to the appeal. At this point, Applicants respectfully cannot expect that this Examiner will ever allow this Application, regardless of the patentability of the

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claims. If Applicants *again* file an appeal and the Examiner is *again* reversed, Applicants anticipate that the Examiner will *again* reopen prosecution by citing another reference that does not render Applicants' claims unpatentable. As such, Applicants reserve the right to contest the validity of this Office Action and take all proper actions with respect thereto.

In any case, Applicants wish to advance prosecution as expeditiously as possible, and are therefore presenting new claims to clarify the patentable aspects of the claims.

In the Office Action, the Examiner rejects claims 68, 70, and 72 under 35 U.S.C. § 112 as failing to comply with the written description requirement. Particularly, the Examiner states, "in claims 68, 70, and 72, such video surveillance of the mobile buyer to be performed automatically by the software having adaptive person-image visual recognition ability automatically to provide computer-implemented visual indication of a personal image of such mobile buyer is not disclosed in the specification" (Office Action, page 2). Applicants respectfully note that this is the first time the Examiner has raised the § 112 issue with respect to these claim despite the nearly 8 years this Application has been pending, and that apparently the Examiner believed the claims complied with § 112 until he was reversed by the Board. Applicants therefore respectfully disagree with the Examiner's § 112 rejection.

Further, Applicants note that the Examiner makes the following statement in the Office Action:

> It should be noted that the claimed *invention explicitly disclose[s]* biometric device to extract the features and characteristic parameters of a face image of the buyer to perform face recognition, and the rejection is based on the reasonable interpretation of the claimed limitataion reciting to perform video surveillance automatically by the software having adaptive personal image visual recognition ability automatically to provide computer implemented visual reorganization [*sic*] [recognition?] of a personal image [of] such mobile buyer, which will distinguish between the face of the buyer and the other objects.

(Office Action, page 7) (emphasis added). Applicants take no position regarding the Examiner's characterization of "the claimed invention." Nonetheless, given that the Examiner asserts that "the claimed *invention explicitly disclose[s]* [a] biometric device to extract the features . . . of a face image of the buyer to perform face recognition" (emphasis added), Applicants respectfully cannot comprehend the Examiner's § 112 rejection above that states, "visual recognition ability . . . to provide computer-implemented visual indication of a personal image of such mobile buyer

is not disclosed in the specification" (emphasis added). These two statements are clearly in contradiction. In any case, as noted above, Applicants cancel claims 68, 70, and 72 with this Reply and therefore respectfully request withdrawal of the rejection because it is moot.

With respect to Applicants' new independent claims, Applicants respectfully submit that they comply with the written description requirement and the other requirements of § 112. The new independent claims find support throughout the specification, claims, and drawing figures as originally filed, but Applicants wish to draw the Examiner's attention to the following sections of the specification:

> Visual analyzer module 168 . . . functions programmably to process, preferably in multi-dimensions, digital image or video information to attempt to recognize, store, compare, or otherwise process visually observed information regarding monitored objects. Module 168 preferably serves to detect object movement or activity within monitoring scope of certain detector sites. This may be achieved at certain times by comparing or correlating observable similarities or differences between initial and subsequent surveillance data therefrom. For example, module 168 may serve object image queries and attempt to recognize, retrieve from image database, or otherwise capture image of person or object associated with target unit 4 determined recently to have entered detector observation scope . . . Preferably, object recognition and condition monitoring, including any monitored changes thereto, are achieved. Such object processing is achieved via visual, video, or image processing, as described herein for optional module 168, to recognize or correlate particular observable object attributes . . . [S]oftware 66 may employ neural-based or adaptive learning for high-transaction processing for tracking real-time data associated with multiple object surveillances and/or movements.

(¶¶ [0099], [0117], and [0122]).

The Examiner rejects claims 68, 70, and 72 under 35 U.S.C. § 103(a) as being unpatentable over Fan et al., U.S. Patent No. 5,959,577 (Fan) in view of Hollenberg, U.S. Patent No. 6,091,956 (Hollenberg) and further in view of Hull (noted above). The Examiner rejects claims 69, 71, and 73 under 35 U.S.C. § 103(a) as being unpatentable over Fan, in view of Hollenberg, further in view of Hull, and still further in view of Kennedy, III et al., U.S. Patent No. 6,301,480 (Kennedy). Applicants respectfully disagree with these rejections but are presenting new claims to clarify the patentable aspects of the claims and to expedite prosecution. Additionally, Applicants do not concede that Fan, Hollenberg, Hull, and/or Kennedy are prior art

with respect to this application, and Applicants reserve the right to antedate Fan, Hollenberg, Hull, and/or Kennedy.

Fan generally discloses a "mobile unit . . . [that] allows a user to report his/her position and to obtain travel-related information over a data network" (3: 11-13). Hollenberg generally discloses, "[a] wireless system for providing services and time-critical information about places and events to mobile computers and their users proximate to their current locations or potential destinations" (Abstract). The Board's decision above addresses the insufficiency of the combination of Fan and Hollenberg in rejecting Applicants' claims, and Applicant reserves the right to further argue against the citation of Fan and Hollenberg in the future. Furthermore, the Examiner concedes that "the combination of Fan and Hollenberg does not particularly teach the software providing access by the vendor processor to a video surveillance of the mobile buyer . . . by the software having adaptive personal image visual recognition ability automatically to provide computer implemented visual reorganization [sic] [recognition?] of a personal image [of] such mobile buyer" (Office Action, page 7).

Hull discloses that "images can be captured and sent to the server for processing with the server . . . [which] would process the captured images *to determine if a good stereo image can be created*. If portions of the stereo image are unacceptable, the server can signal . . . the photographer to capture additional images" (3: 48-54). The Examiner, however, asserts that Hull discloses, "[a] face recognition is software that enables to extract features of a personal image of the buyer or user and then compare with a pre-stored database, e.g. 58 of fig. 1, to recognize the personal image of the buy[er] or user" (Office Action, page 8). Applicants respectfully submit that Hull does not disclose, suggest, or contemplate anything of the sort, and that the Examiner is using what Applicants disclose in this Application to reject Applicants' claims. Rather, Hull merely discloses a method for obtaining adequate stereo images and says nothing about "face recognition software," or "compar[ing] with a pre-stored database."

Although Hull states, "[f]ace recognition is a similar example" (3: 55), Hull only addresses *constructing* stereo images of faces. Hull says nothing about "*comparing* the image of the buyer to a stored image of the buyer" as recited in independent claim 74 (emphasis added). Hull states that the "capture device and the server could cooperate to interactively perform stereo matching . . . Stereoscopic images are formed from two images of one scene taken at slight offset

of each other. In many stereoscopic systems, the precise relative position of the camera between the two images is needed. However, it is now possible to perform stereoscopic 'matching' (*alignment of the two images* to create the 3D effect)" (3: 55-57; 4: 47-56) (emphasis added). Thus, it is clear that Hull uses multiple images of the same face at the same time in order to *construct* a stereographic 3D image of the face. Hull therefore does not disclose, "*recognizing* an image of a buyer associated with the mobile buyer unit by *comparing* the image of the buyer to a stored image of the buyer" as recited in independent claim 74 (emphasis added), and as similarly recited in independent claims 90 and 95. In any case, neither Hull nor the other cited references disclose or suggest "neural-based software or adaptive learning software" as recited in Applicants' independent claims.

Moreover, Hull *teaches against* "comparing the image of the buyer to a *stored* image of the buyer" as recited in independent claim 74 (emphasis added). Hull states, with respect to "face recognition" (i.e., constructing a stereographic 3D image of the face), "[t]his would *overcome the need* for subjects to have stereo photographs *stored* in a laboratory" (3: 58-60) (emphasis added). For at least these reasons, Applicants respectfully submit that independent claims 74, 90, and 95 are allowable over the cited references.

Dependent claims 75-89, 91-94, and 96-98 variously depend from independent claims 74, 90 and 95 that are allowable, so dependent claims 75-89, 91-94, and 96-98 are allowable at least because they depend from allowable claims, in addition to their own unique features.

When "at least one of A, B, or C" is used in the claims, Applicants intend the phrase to mean any of the following: (1) at least one of A; (2) at least one of B; (3) at least one of C; (4) at least one of A and at least one of B; (5) at least one of B and at least one of C; (6) at least one of A and at least one of C; or (7) at least one of A, at least one of B, and at least one of C.

The claims of the present application are different and possibly broader than the claims pursued in the parent or related applications. To the extent any amendments or characterizations of the scope of any claim or referenced art could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicants hereby rescind and retract such disclaimer. Accordingly, the references construed in the parent or related applications may need to be revisited.

The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further clarify the above amendments. Applicants authorize and respectfully request that any fees due be charged to Deposit Account No. 19-2814.

Respectfully submitted,

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